

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH R. BESSINGER,

Plaintiff-Appellant,

v

OUR LADY OF GOOD COUNSEL/ROMAN
CATHOLIC ARCHDIOCESE OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
September 2, 2014

No. 316143
Wayne Circuit Court
LC No. 12-008830-CZ

Before: MURPHY, C.J., and WHITBECK and GLEICHER, JJ.

PER CURIAM.

The underlying dispute between the parties regards plaintiff's entitlement to workers' compensation benefits arising out of an alleged work-related injury sustained in 1992. The case has a long and tortured procedural history. Plaintiff filed the instant action in the circuit court seeking enforcement of a 2004 decision by the Workers' Compensation Appellate Commission (the commission), which is now named the Michigan Compensation Appellate Commission pursuant to Executive Order 2011-6, effective August 1, 2011. The 2004 decision by the commission reversed a workers' compensation magistrate's decision and ruled that plaintiff was entitled to full benefits. Plaintiff filed a motion to settle judgment so as to accomplish the directive in the commission's 2004 decision. Plaintiff requested judgment in an amount exceeding \$200,000 for unpaid benefits, plus interest, covering the period of April 2004 to July 2012. In turn, defendant filed a motion for summary disposition, asserting that the circuit court lacked subject-matter jurisdiction under MCL 418.863 with respect to plaintiff's complaint. The circuit court denied plaintiff's motion to settle judgment and granted defendant's motion for summary disposition. Plaintiff appeals as of right, and we affirm.

The issue regarding whether subject-matter jurisdiction existed is a question of law that this Court reviews de novo on appeal. *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 708-709; 742 NW2d 399 (2007). We likewise review de novo the interpretation of a statute. *Cairns v East Lansing*, 275 Mich App 102, 107; 738 NW2d 246 (2007). MCL 418.863 provides:

Any party may present a certified copy of an order of a worker's compensation magistrate, an arbitrator, the director, or the appellate commission in any compensation proceeding to the circuit court for the circuit in which the

injury occurred, or to the circuit court for the county of Ingham if the injury was sustained outside this state. The court, after 7 days' notice to the opposite party or parties, shall render judgment in accordance with the order unless proof of payment is made. The judgment shall have the same effect as though rendered in an action tried and determined in the court and shall be entered and docketed with like effect.

The circuit court's jurisdiction under MCL 418.863 is only triggered when an order for workers' compensation benefits is deemed final and no appeals remain pending. *Cook v The Hearthside, Inc.*, 162 Mich App 236, 241-242; 412 NW2d 276 (1987). The statute clearly envisions a setting in which an order for benefits was entered by a magistrate, arbitrator, the director, or the commission, which has been finalized with all appeals exhausted, followed by a failure to pay the awarded benefits. Under such circumstances, MCL 418.863 permits a party to seek enforcement of the award through a circuit court action. The crux of the issue here entails identifying, if one exists, a final order that is no longer subject to appeal, making it enforceable by the circuit court under MCL 418.863. A review of the case's history is necessary.

In November 1994, a magistrate granted plaintiff an open award of workers' compensation benefits as a result of the alleged work-related injury in 1992. The commission affirmed that award in November 1997. It does not appear that there were any judicial appeals of the commission's ruling that affirmed the magistrate's award of benefits. In October 1999, defendant filed a petition to stop in which it sought termination of plaintiff's benefits on the assertion that plaintiff was intentionally avoiding work. The petition to stop benefits was denied by a magistrate. The commission affirmed that determination in July 2002. This Court denied defendant's application for leave to appeal. *Bessinger v Our Lady of Good Counsel*, unpublished order of the Court of Appeals, entered November 14, 2002 (Docket No. 243286). In lieu of granting leave, our Supreme Court remanded the matter to the commission for reconsideration in light of *Sington v Chrysler Corp.*, 467 Mich 144; 648 NW2d 624 (2002). *Bessinger v Our Lady of Good Counsel*, 468 Mich 920; 664 NW2d 210 (2003). The commission proceeded to return the case to the magistrate for the required *Sington* analysis.

In June 2004, the magistrate, employing the analysis from *Sington*, determined that plaintiff was only partially disabled. However, the commission, in the November 2004 decision that plaintiff sought to enforce in the circuit court action, reversed the magistrate's ruling, finding that plaintiff was "compensably disabled" and entitled to full benefits. This Court denied defendant's application for leave to appeal. *Bessinger v Our Lady of Good Counsel*, unpublished order of the Court of Appeals, entered April 29, 2005 (Docket No. 259974). In lieu of granting leave, our Supreme Court remanded the matter to the commission for clarification on the commission's position regarding some factual issues about a telemarketing job obtained by plaintiff. *Bessinger v Our Lady of Good Counsel*, 474 Mich 1053; 708 NW2d 433 (2006). The Supreme Court retained jurisdiction. *Id.* The commission then issued a supplemental opinion addressing the issues upon which the Supreme Court sought clarification. With the clarification, and having retained jurisdiction, our Supreme Court entered an order in 2008 that is at the heart of the dispute over the circuit court's subject-matter jurisdiction. *Bessinger v Our Lady of Good Counsel*, 482 Mich 996; 756 NW2d 81 (2008). The Court stated in its order as follows:

By order of January 31, 2006, this case was remanded to the Workers' Compensation Appellate Commission for a supplemental opinion. On order of the Court, the opinion having been received, the application for leave to appeal the April 29, 2005, order of the Court of Appeals is again considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we vacate the prior decisions of the workers' compensation tribunals and we remand this case to the Board of Magistrates for a new hearing and a decision consistent with this Court's decision in *Stokes v Chrysler LLC*, 481 Mich 266 (2008). The plaintiff's current entitlement to benefits shall continue until a new decision is issued by the Board. We do not retain jurisdiction.

On remand to the magistrate from the 2008 Supreme Court order, he ruled in June 2012 “that plaintiff failed to establish a disability arising out of the June 30, 1992, injury date.” The magistrate expressly denied plaintiff's November 1992 application for mediation or hearing on benefits. The magistrate, however, also dismissed defendant's 1999 petition to stop benefits. In July 2012, plaintiff filed the instant circuit court action. During the pendency of this appeal, the commission, reviewing the magistrate's 2012 decision, affirmed the magistrate's disability determination, i.e., that plaintiff failed to establish a disability for purposes of workers' compensation benefits. However, the commission found that the magistrate “erred when he failed to address [defendant's] petition to stop benefits.” The commission remanded the matter to the magistrate “for adjudication of defendant's petition to stop benefits.” The commission rejected plaintiff's argument that the 2008 Supreme Court order affirmed the earlier disability determination by ordering the continuation of benefits. The commission noted that the 2008 order vacated all prior decisions by workers' compensation tribunals. On the issue of defendant's petition to stop the payment of benefits, the commission ruled:

[W]e cannot excuse the magistrate's dismissal of defendant's petition to stop benefits. Defendant requested relief from payment of benefits as well as the right to recoup overpayments in its 1999 petition to stop benefits. The petition to stop necessitates different findings and imposed a different burden of proof on a different party. Moreover the right to recoup overpayments constitutes an independent issue for consideration. The magistrate erroneously dismissed the petition to stop without explanation.

With this background, we first make some observations regarding the Supreme Court's 2008 order. By tracing the history of the case, it cannot be disputed that the 2008 order ultimately related back to defendant's 1999 petition to stop the payment of benefits. It was the 1999 petition and the rulings and appeals thereon that resulted in the 2008 Supreme Court order. The 1994 decision granting an open award of benefits was not up for review in the 2008 order, as that decision was never successfully appealed by defendant. By grasping these procedural aspects of the litigation, the 2008 order of the Supreme Court, which vacated prior workers' compensation decisions yet continued plaintiff's current entitlement to benefits, made perfect sense. The Supreme Court was vacating all workers' compensation decisions flowing from defendant's 1999 petition to stop benefits; prior decisions would not have been within the Supreme Court's appellate jurisdiction at the time. The continuation of benefits ordered by the Supreme Court necessarily emanated from the 1994 award of benefits, which was not and could not have been vacated by the Supreme Court, given jurisdictional limitations. However, the

Supreme Court's order did leave open the possibility of a decision that the 1994 award of benefits should have been halted five years later under the 1999 petition to stop benefits.

Our view of the Supreme Court's 2008 order was evidently not shared by the magistrate and the commission, given that subsequent to the order's entry they reached the conclusion that plaintiff failed to establish a disability and was not entitled to benefits from the beginning. The panel in this particular appeal has no authority to dictate otherwise to the magistrate or the commission. Although plaintiff voices a position on appeal that is fairly consistent with our analysis, he argued below that the commission's 2004 decision was the order that required enforcement under MCL 418.863, not the 1994 open award of benefits. But the 2004 decision by the commission was necessarily vacated by the 2008 order of the Supreme Court. Plaintiff also argues that the circuit court had jurisdiction to simply enforce the 2008 Supreme Court order. However, the Supreme Court directed that further proceedings be conducted by the magistrate, the Supreme Court's order on the topic of benefits was not final, the continuation of benefits flowed from the 1994 award, plaintiff did not frame his claim in such a manner in the complaint, and MCL 418.863 makes no reference to enforcement by the circuit court of a *Supreme Court* order. Accordingly, plaintiff's argument lacks merit.

Although the 1994 open award of benefits appears at first glance to be a final order for purposes of enforcement under MCL 418.863, we hold that it is not a final order subject to enforcement in the circuit court under the unique procedural circumstances of this case. First, the magistrate and the commission, as noted above, took the position that the 1994 award was not final and was indeed subject to being eviscerated, and any ruling recognizing jurisdiction in the circuit court could eventually lead to conflicting orders that could not be reconciled. Second, plaintiff's complaint did not seek enforcement of the 1994 award, and thus there is a preservation failure. Third, and most importantly, the 1994 award was not final for purposes of the specific relief sought by plaintiff in the circuit court action. Plaintiff was attempting to obtain unpaid benefits covering the period of April 2004 to July 2012, and not any benefits from 1994 until 1999 when defendant's petition to stop benefits was filed. Whether plaintiff was entitled to benefits spanning the period of 2004 to 2012 depends on the final resolution of the 1999 petition to stop benefits, which was the subject of the 2008 Supreme Court order. Stated differently, whether plaintiff was entitled to benefits spanning the period of 2004 to 2012 depends on whether the 1994 award survives the 1999 petition to stop benefits. At the present time, matters are still pending, as the commission has remanded the case to the magistrate for resolution of the petition to stop benefits, and appeals thereafter would also be available. The bottom line is that the circuit court cannot be permitted to entertain the issue whether to enforce the payment of benefits from 2004 forward under the 1994 award, in light of the fact that said issue has now been addressed by the magistrate and commission pursuant to the 2008 Supreme Court order, with further proceedings pending, including the possibility of yet another appeal to this Court and our Supreme Court.

The circuit court lacked subject-matter jurisdiction under MCL 418.863. Accordingly, the court did not err in granting summary disposition in favor of defendant. Our holding does not preclude plaintiff from presenting arguments in support of his theories to the magistrate, the commission, to this Court, and to our Supreme Court within the context of the current pending proceedings. We simply preclude plaintiff from doing so through the circuit court action that was filed.

Affirmed. Having fully prevailed on appeal, defendant is awarded taxable costs pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher